

Appl. No. 09/446,550
Atty. Docket No. CM-1519Q
Arndt Dated May 24, 2004
Reply to Office Action of February 24, 2004
Customer No. 27752

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Remarks/Arguments

Claim Status

The Office Action Summary in the present Office Action (Paper No. 19) continues to indicate that Claims 1–28 as pending, with Claims 1–14 standing rejected and Claims 15–28 being withdrawn from consideration. The Applicants respectfully direct the Examiner to the question with respect to Claims 21–28 in Paper Nos. 16 and 18. They continue to seek clarification regarding the basis for the indication that there are 28 claims pending in the present application.

Claim Amendments

Claim 1 has been amended to describe the specific method used to measure MVTR (support at page 9, lines 14–16).

Claim 1 has also been amended to point out that the activation process whereby a laminate passes through at least one roll pair with engaging ridges and grooves on the roll pair provides a multiplicity of corrugations to at least a portion of the laminate. Support for the amendment can be found at page 11, line 18–28 and Fig. 3. The corrugated shape of the activated laminate is clearly shown in the figure and, because the laminate is permanently deformed (page 11, lines 23 and 24) this corrugation is maintained in the backsheet material.

Rejections Under 35 USC § 103(a)

The Office Action maintains the rejection of Claims 1–14 under 35 USC § 103(a) as being unpatentable over Dobrin (US 5,628,737) in view of Tapp (US 5,169,712). The Office Action admits that the Dobrin patent fails to disclose the use of a particulate filler material embedded in a polymeric film layer and asserts that the patent discloses all other aspects of the invention. Specifically, the Office action states that:

- The Dobrin patent discloses an absorbent article 20 (Figure 2) comprising a core region 74 and a chassis region 76 surrounding the core region.

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- The article 20 is said to also comprise a laminate 95 which extends into both the core region and the chassis region to form a core backsheet and a chassis backsheet. The laminate 95 is said to comprise a polymeric film layer 26 (col. 6, lines 42-43) and a fibrous layer 90 (col. 9, lines 51-52). The laminate 95 is said to also comprise apertures 84 in the chassis region 76. The Office Action asserts that the apertures 84 give the chassis region 76 a higher degree of breathability than the core region 74, hence the MVTR in the core region 74 is asserted to be lower than the MVTR in the chassis region 76.

The Office Action goes on to state that the Tapp reference discloses a breathable laminate comprising a polymeric film layer and a fibrous layer (col. 4, lines 39-42, 60 and 61). The polymeric film layer is said to: 1) have a basis weight greater than 25 gsm (col. 16, lines 29-32), 2) comprise a polymeric matrix and a particulate film material (col. 6, lines 65-68) and 3) enhance breathability by the formation of cracks around the particulate filler material (col. 13, lines 15-18). The Office Action goes on to conclude that it would have been obvious to construct the laminate of Dobrin using the polymeric film layer of Tapp to increase breathability of the laminate.

Responding to the Applicants' amendment describing the cracks as being formed by an activation process in Paper No. 18 the Examiner takes the position that the limitation makes the claim a product by process claim and that the article disclosed by Dobrin in view of Tapp comprises the structure of the claimed invention.

In response, the Applicants respectfully direct the Examiner to Claim 1 as amended. The Applicants submit that an article combining the teachings of the Dobrin, *et al.* patent and the Tapp reference fails to establish a *prima facie* case of obviousness because *the combination fails to teach or suggest all of the limitations of Claim 1 as amended (MPEP § 2143.03)*. Specifically, the combination fails to teach or suggest an activated laminate where at least a portion thereof is permanently deformed so as to be provided with a multiplicity of corrugations or with the claimed MVTR values. The Applicants

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respectfully submit that the combination of Dobrin and Tapp fails to make a *prima facie* case of obviousness with respect to Claim 1 as mended for at least the following reasons:

- An article according to the combined teachings of Dobrin and Tapp would not have a multiplicity of corrugations in at least a portion of a laminate of a polymeric film layer and a fibrous layer (The Applicants also point out that, because the it is the laminate that passes through the roll pair with engaging ridges, both the film and fibrous layers thereof are permanently deformed and provided with ridges). As noted above, the Office action admits that Dobrin fails to teach a film layer with embedded particulate filler material and relies on Tapp to arrive at an article said to make the presently claimed invention obvious. The Applicants respectfully point out that the product resulting from an activation process involving engaging rolls will uniquely be provided with corrugations because of the permanent deformation and that this product will be clearly differ from a product produced according to a combination of Dobrin and Tapp because the product of such a combination would not have such corrugations. Specifically, the Office Action relies on Tapp to provide breathability by the formation of cracks around a particulate material. However, the Tapp reference clearly teaches that the cracks are formed by stretching the material (col. 13, lines 15–18). The Tapp reference further teaches that such stretching can be accomplished either by longitudinal stretching by rolls or transverse stretching by a tenter (col. 11, lines 28). Neither of these stretching means will result in a multiplicity of corrugations because:
 - As is well known in the art, longitudinal stretching by rolls is accomplished by operating a downstream roll pair at a higher surface velocity than an upstream roll pair. A web passing through the nips created by both roll pairs will, of necessity, be stretched in order to match the surface velocity of each roll pair. It is clear that such stretching maintains the web in a smooth, uncorrugated configuration because all portions of the web are exposed equally to the surface velocity difference.

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- Tentering is also a well known process for providing transverse stretching. In the tentering process a web is grasped on each edge by a series of diverging roll pairs which provides a transversely oriented force causing the web material to stretch in the transverse direction. Again, there is nothing in the tentering process that will result in a multiplicity of corrugations because the transverse force is applied equally across the web.

Net, an article combining the teachings of Dobrin and Tapp would not have a multiplicity of corrugations in at least a portion of a laminate of a polymeric film layer and a fibrous layer.

- Even if it would be asserted that Tapp's stretching process would result in corrugations, a laminate of Tapp's stretched film and a fibrous layer would still not have a multiplicity of corrugations, as described in Claim 1 as amended, because Tapp's stretching step happens before any lamination (Tapp at col. 16, lines 43 and 44). Therefore, at best, an article comprising the teachings of Dobrin and Tapp may have corrugations in the film layer thereof.
- There is nothing to suggest that the MVTR values of an article combining Dobrin and Tapp where the material is stretched as described by Tapp to impart porosity thereto bears any relation to the claimed MVTR difference. Specifically, as noted in the Applicants' previous response the present application and the Tapp reference use different methods to evaluate MVTR. In response to these arguments, the Office Action that the method of measuring MVTR is not stated in the claims. The Applicants have now amended Claim 1 to recite the method used for such measurements.

To summarize, The Applicants have shown above that the Office Action fails to establish a *prima facie* case of obviousness with respect to Claim 1 as amended. Therefore, the Applicants respectfully request reconsideration of the rejection of Claim 1, its withdrawal and that Claim 1 be allowed.

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Regarding individual claims, the Office Action repeats the specific grounds of rejection from Paper No. 17. For the sake of brevity the Applicants will not summarize them again and direct the Examiner to Paper No. 18.

The Applicants respectfully direct the Examiner to the amendment to Claim 1. The Applicants respectfully point out that Claims 2-14 depend therefrom, having all the limitations of the base claim. Therefore, all of dependent claims are, of necessity, allowable over the combination of Dobrin and Tapp. In particular, the amendment to Claim 1 adding the method of MVTR measurement clearly differentiates these claims from the article that may be created by a combination of Dobrin and Tapp. Given the amendment to Claim 1 and the dependency of Claims 2-14 therefrom, the Applicants respectfully request that the Examiner reconsider the rejection of Claims 2-14 over the combination of Dobrin and Tapp, withdraw it and allow the claims.

SUMMARY

All of the rejections in the Office Action have been discussed as have the distinctions between the cited references and the claimed invention. No new matter has been added by the Amendment. In light of the amendments to the claims and discussions contained herein, the Applicants respectfully request reconsideration of the rejections, their withdrawal, and allowance of all of the claims. Issuance of a Notice of Allowance at an early date is earnestly solicited.

Respectfully submitted,
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